

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,150

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for General Assistance (GA) benefits. The issue is whether the petitioner is "able-bodied" within the meaning of the pertinent regulations or whether the petitioner has two or more "employment barriers".

FINDINGS OF FACT

The petitioner is a fifty-four-year-old man who was recently released from jail after serving fourteen years. For several weeks prior to January 17, 1996, the petitioner received GA from the Department based on statements from his doctor that he was unable to perform any work due to abdominal problems and a neck deformity.

When the petitioner applied for GA on January 17, 1996, the Department denied the application because on the medical report form the petitioner submitted that day the petitioner's doctor had checked off that the petitioner was capable of performing full-time work other than his usual occupation (which, before the petitioner went to jail, appears to have been heavy physical labor). The doctor also stated that the petitioner's present illness or injury would only be expected to last one month.

The petitioner is presently staying at a homeless shelter and participates in a sobriety maintenance program, which is not state or federally funded (see infra). He admits he is looking for work, and he does not maintain that he is physically unable to do so. The petitioner believes, however, that he isn't being hired because of his history of incarceration and his physical appearance (due to his neck deformity).

At the hearing, held on February 7, 1996, the hearing officer and the Department advised the petitioner that if his doctor would certify that he can't work he should reapply for benefits. The petitioner was also advised to apply for Vocational Rehabilitation services.

ORDER

The Department's decision is affirmed.

REASONS

The GA regulations provide that an individual without minor dependents is eligible for GA only if he is not "able-bodied" or if he meets two or more defined "employment barriers". W.A.M. § 2600B. "Able-bodied" is defined in § 2601 as follows:

Able-bodied - means a person who has no physical or mental impairment which prevents him from working. A person shall be considered as not able-bodied if he is currently unable to work due to physical or emotional problems which have or presumably will last at least 30 days. This eligibility factor must be verified by a signed statement from a physician or licensed practitioner whose services would be covered under Medicaid were the GA applicant a Medicaid recipient.

As noted above, the petitioner's doctor, while stating that the petitioner would be precluded from performing his "usual" work for a duration of one month, also stated that the petitioner did not have any limitation on performing other full-time work. The petitioner, himself, did not allege a medical disability--only that his record and physical appearance make employers disinclined to hire him. Thus, it cannot be concluded that the petitioner is not "able-bodied", as defined above.

"Employment barriers" are defined in § 2600B(3) as follows:

- a. Age 55 or over.
- b. Eighth-grade education or less -or- inability to read or write. Eighth-grade education is completion of eighth-grade, but not completion of ninth grade.
- c. Employment or self-employment of fewer than six months in the last five years and full-time student status fewer than six months in the last five years.
- d. Release from a mental health institution or mental health hospital unit within the last 6 months.
- e. Participating in a state or federally funded drug or alcohol treatment program.

The petitioner has not worked at all in the last fourteen years, and clearly meets the criterion under c, above. Unfortunately, however, the petitioner will not turn 55 until December, 1996, he is participating in a treatment program that is not state or federally funded, and he has more than an eighth-grade education and can read and write. Although he is extremely close, it cannot be concluded that the petitioner meets the definition of more than one of the above "employment barriers".

Inasmuch as the Department's decision is in accord with the pertinent regulations, it must be affirmed. 3 V.S.A. § 3091(d), and Fair Hearing Rule No. 17.

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